PUBLIC PROSECUTOR

v.

JAGTAR SINGH & 3 ORS.

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD HISHAMUDIN MOHD YUNUS J
[CRIMINAL REVISION NO. 43-2-96]
12 MARCH 1996

CRIMINAL LAW: *Revision - Illegal entry - Section 6(3) Immigration Act 1959/63 - Whether a foreigner who enters the Duty Free Zone after having entered Malaysia from Thailand by land and not in possession of a permit commits an offence under s. 6(3).*

WORDS & PHRASES: *"Entry" - Section 2 Immigration Act 1959/63.*

This was an application for revision by the Deputy Public Prosecutor (DPP) in relation to the arrest of four Indian nationals (the respondents) at the Duty Free Zone located about 120 meters from the Malaysian-Thailand border and 500 meters from the immigration check point. Following their arrest, the respondents were charged for entry without a permit pursuant to s. 6(3) of the Immigration Act 1959/63 (the Act) and prosecuted with the sanction of the DPP. They pleaded guilty and were convicted and sentenced to 4 months imprisonment. Subsequently, the DPP having a different view, applied to this Court to quash the conviction and set aside the sentence on the ground that the charge discloses no offence. The DPP submitted that although the respondents had crossed the border into Malaysian territory, they had proceeded to the Duty Free Zone and had not passed the immigration check point and thus had not committed an act of *entry* as defined in s. 2 of the Act and since there was no entry there was no requirement of a permit or pass. Therefore the respondents had not committed any offence under s. 6(3) of the Act. The DPP relied on the fact that the respondents had not yet left the precincts of the immigration control post as defined in s. 2(c) of the Act.

Held:

It is clear that definition (c), on which the DPP relies, applies only to a situation where a foreigner, having entered Malaysia by land, *proceeded to an immigration control post in accordance with s. 26.* Now, so long as he is in the process of proceeding to an immigration control post, he cannot be said to have committed the act of entry. In the present case, the situation is different: the respondents, having entered the country by land from Thailand, did not proceed to the immigration control post. Instead, they proceeded to the Duty Free Zone. There is however, nothing in the Act that deems such an act (of proceeding to the Duty Free Zone), or that compels me to presume such an act, as an act of proceeding to the immigration control post in

accordance with s. 26. Hence, the question of the respondents having not yet left the immigraiton check point does not arise. The respondents, by being present in the Duty Free Zone, had, in law, committed an act of entry as defined in (d) above (i.e. "(d) *in any other case*, any entry into Malaysia by land, sea or air,"). Since they had committed an act of entry but were not in possession of either a permit or a pass, they had committed an offence under s. 6(3).

[Application for revision disallowed]

Legislation referred to:
Immigration Act 1959/63, ss. 2, 6(3), 58(2)

For the applicant - Ahmad Zaidi bin Ibrahim, DPP
For the respondents - In person

JUDGMENT

Mohd Hishamudin Mohd Yunus J:

There are several ways of entering Malaysia by road from our northern neighbouring country, Thailand. One way is through the Danok-Bukit Kayu Hitam route. By this route, one would cross the Malaysian-Thailand border after passing the town of Danok (in Thailand) and proceeding southwards. After having crossed the border into Malaysia, using the dual carriage way, one would soon be able to see the Malaysian immigration check point which is situated about 620 meters form the Malaysian-Thailand border. However, before one reaches the check point, there is an area known as the "Duty Free Zone" ("Kawasan Bebas Cukai"), which is located on the right hand side (as one faces south) of the dual carriage way and aobut 120 meters from the border. In this zone there is a building which houses a shopping complex. This Duty Free Zone was established by the Government for the purpose of duty-free shopping. A person entering Malaysia from Thailand and intending to visit the shopping complex in the Duty Free Zone, would have to make a right turn after travelling for about 300 meters, cutting across the divider and the lane on the other side of the dual carriage way. He will find the Duty Free Zone located by the side of the road.

This application for revision by the Deputy Public Prosecutor raises an important and interesting point of law: whether a foreigner who enters the Duty Free Zone after having entered Malaysia from Thailand by land and is not in possession of a pass or permit, commits an offence under s. 6(3) of the Immigration Act 1959/63

All the four respondents in this application for revision by the DPP are foreigners from India. They were arrested by the police on 18 January 1996 at the Duty Free Zone and, with the sanction to prosecute of the DPP given on 1 February under s. 58(2) of the Immigration Act 1959/63, were charged at the Magistrate's Court, Jitra, for the following offence;

> Bahawa kamu bersama-sama pada 18 January 1996 jam lebih kurang 12.05 tengah hari, di Kawasan Bebas Cukai Bukit Kayu Hitam, Changlon, di dalam Daerah Kubang Pasu, di dalam Negeri Kedah Darul Aman, telah didapati masuk ke Malaysia dari suatu tempat di luar Malaysia, iaitu, Thailand, tanpa sebarang pas atau permit yang sah, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah s. 6(3) Akta Imigresen 1959/63 dan boleh dihukum di bawah seksyen 57 Akta yang sama.

Before the learned Magistrate, all the respondents pleaded guilty to the charge and were convicted and sentenced to four months imprisonment.

The learned DPP, having previously given the sanction to prosecute, subsequently has a different view on the matter. He now applies to this Court to exercise its power of revision to quash the conviction and to set aside the sentence of the learned Magistrate on the ground that the charge discloses no offence. The learned DPP brings to my attention s. 6 of the Act which provides:

> **Control of entry into Malaysia.**
>
> 6. (1) No person other than a citizen shall enter Malaysia unless:
>
> (a) he is in possession of a valid Entry Permit or Re-entry Permit lawfully issued to him under s. 10 or 11;
>
> (b) his name is endorsed upon a valid Entry Permit or Re-entry Permit in accordance with s. 12, and he is in the company of the holder of the Permit;
>
> (c) he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or
>
> (d) he is exempted from this section by an order made under s. 55.
>
> (2) (Repealed)
>
> (3) Any person who contravenes subsection (1) shall be guilty of an offence against this Act.
>
> (4) The burden of proof that a person entered Malaysia without contravening subsection (1) shall lie upon that person, and in any prosecution for an offence under subsection (1) shall lie upon that person, and in any prosecution for an offence under subsection (1) it shall not be necessary to specify in the charge the date, time place or manner of the entry of such person into Malaysia, or the means of travel used for such entry, and such prosecution may be held at any place in Malaysia.

The learned DPP submits that the respondents, although had crossed the Malaysian-Thailand border into Malaysia and were in Malaysian territory, nevertheless, by proceeding to the Duty Free Zone, had not passed through the immigration checkpoint and since they had not passed the immigration checkpoint, therefore, they had not committed an act of *entry* as defined in the Act. And since they had not committed an act of entry, legally, it was not required of them to be in possession of either a pass or permit. The learned DPP, therefore, submits that all the four respondents had not committed any offence under s. 6(3). In submitting that there was no entry into Malaysia, he refers to the definition of "entry" in s. 2 of the Act which states;

> "entry" means:
>
> (a) in the case of a person arriving by sea, disembarking in Malaysia from the vessel in which he arrives;
>
> (b) in the case of a person arriving by air at an authorized airport, leaving the precincts of the airport;
>
> (c) in the case of a person entering by land and proceeding to an immigration control post in accordance with s. 26, leaving the precincts of the post for any purpose other than that of departing from Malaysia by an approved route; and
>
> (d) in any other case, any entry into Malaysia by land, sea or air.

The learned DPP in his submission relies on (c) above, in particular, the words "... leaving the precincts of the post ..." and points to the Court the fact that, at the point of arrest, the respondents had not yet left the precincts of the immigration control post.

With respect, I am unable to accept the learned DPP's submission that since, when arrested, the respondents and not yet passed the immigration check point therefore, the arrest was premature. It is clear that the definition (c), on which he relies, applies to a different kind of situation: it applies only to a situation where a foreigner, having entered Malaysia by land, **proceeded to an immigration control post in accordance with s. (26)**. Now, so long as he is in the process of proceeding to an immigration control post, he cannot be said to have committed the act of entry. In the case before me, however, the situation is different: the respondents, having entered the country by land from Thailand, did not proceed to the immigration control post. Instead, what they did was, after having crossed the border into this country, they proceeded to the Duty Free Zone. There is, however, nothing in the Act that deems such an act (of proceeding to the Duty Free Zone), or that compels me to presume such an act, as an act of proceeding to the immigration control post in accordance with s. 26. Hence, in the present case, the question of the respondents having not yet left the immigration check point does not arise. In my opinion, in the present case, the respondents, by being present in the Duty

Free Zone, had, in law, committed an act of entry as defined in (d) above (i.e. "(d) **in any other case**, any entry into Malaysia by land, sea or air;"). Since they had committed an act of entry but were not in possession of either a permit or a pass, they had committed an offence under s. 6 (3).

This application for revision is, therefore, disallowed.

Reported by Cindy Chan